

CONCESSION AGREEMENT

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and Endless Summer Surf Academy, LLC ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney ("Effective Date"), as follows:

1. **Incorporated Documents.** This Agreement is created pursuant to the City of San Diego REQUEST FOR PROPOSAL ("RFP") for Surf Instruction Concessions issued by the CITY on January 14, 2019, and CONCESSIONAIRE's proposal in response to the RFP, dated February 8, 2019. Attached and incorporated herein are the following documents: **Exhibit A: Map of Sites; Exhibit B: Operating Plan; Exhibit C: Lifeguard Services Safety Requirements.** Additional terms and conditions listed in the RFP may also apply throughout the term of the Agreement.
2. **Right to Enter.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate Concessions within CITY beach sites ("Site(s)") designated by the CITY. The locations of the Sites included under this Agreement are designated below.

Area/Beach	Sites
Mission Beach	#2 Old Mission Beach Lifeguard Tower

Concessions at any of the above Sites may be terminated or changed for any reason by CITY upon thirty (30) days written notice from CITY to CONCESSIONAIRE. If CITY terminates a Concession at an existing Site and an alternate Site is not available to CONCESSIONAIRE, a proportionate amount of CONCESSIONAIRE's Minimum Fee (as specified in Section 10.B.) may be adjusted by CITY for the deleted Site.

3. **Allowed Uses.** This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction school/camp and other incidental operations such as boogie boarding and stand up paddle boarding ("Concessions"), serving the general public under the terms and conditions of this Agreement. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Agreement.
4. **Maximum Days and Hours of Operation.** Maximum hours of land-based operations are 8:30 a.m. to 6:00 p.m. Water instruction is permitted from 9:00

a.m. to 5:00 p.m. All Concessions must be vacated by 6:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven (7) days a week with the following exceptions:

- A. ***Under no circumstances are operations permitted on the following City holidays: Independence Day, July 4th.***
 - B. **Special Events.** Unless otherwise authorized by the CITY, CONCESSIONAIRE will not be allowed to operate Concessions within certain areas of the Sites during days in which "Special Events," as defined in San Diego Municipal Code section 22.4003, are scheduled by CITY in this area. CITY will give CONCESSIONAIRE fourteen (14) days advance written notice of any such "Special Events."
5. **Competent Management.** Throughout the term of this Agreement, CONCESSIONAIRE will provide competent management of the Concessions and the Sites for the permitted uses to the satisfaction of the CITY. CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concessions to maximize gross revenue.
 6. **Term.** The term of this Agreement ("Term") will be will be sixty (60) months, commencing on the Effective Date. Agreement Year ("Agreement Year") as used in this Agreement means each of the five (5) consecutive twelve (12) month periods beginning with the Effective Date. This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice to the other party. Any written notice to this effect will be served in accordance with Section 47 of this Agreement.
 7. **Holding Over.** Any use of the Sites by CONCESSIONAIRE after the expiration of this Agreement is not permitted without the written consent of the CITY. Any such extensions will continue as month-to-month extensions of this Agreement. If CONCESSIONAIRE continues use of Sites after the expiration or earlier termination of this Agreement without obtaining CITY approval, such use shall neither constitute a renewal or extension of this Agreement, nor give CONCESSIONAIRE any rights in or to the Sites. Any holdover of the Term of the Agreement beyond sixty (60) months must be approved by CITY.
 8. **Revocable License.** This Agreement is not a lease. This Agreement is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY will not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of the termination or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY's termination or

suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.B, that conflicts with or prohibits CONCESSIONAIRE's use the Sites.

9. Special Provisions

A. Operating Plan. The Operating Plan for the proposed Agreement Year submitted with the CONCESSIONAIRE's response to the CITY's RFP, will be revised by CONCESSIONAIRE, if required by CITY to meet CITY's requirement for approval, and the final CITY approved Operating Plan will be incorporated into this Agreement as **Exhibit B: Operating Plan**, attached hereto. *Within sixty (60) days prior to the beginning of the second Agreement Year, and for every Agreement Year thereafter, the CONCESSIONAIRE will provide the CITY with an Operating Plan for the upcoming Agreement Year (twelve (12) calendar months) for the CITY's approval.* All Operating Plans submitted to CITY should be consistent with the format and content of the originally approved Operating Plan. CITY will have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE will not make any changes to the plan without prior written approval of CITY. At all times, the CONCESSIONAIRE will ensure that all operations permitted under this Agreement comply with the **Exhibit C: Lifeguard Services Safety Requirements**, attached hereto.

B. Exclusiveness of Agreement and Unauthorized Vending. In addition to Special Events described in Section 4.B., CITY may, during the term of this Agreement, enter into Agreements with other CONCESSIONAIRE's to provide related Concessions during times not scheduled for operations in the approved Operating Plan at the Sites permitted in this Agreement. However, CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Sites will be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities will be maintained.

C. Concession Sites. On each Site included in this Agreement, CONCESSIONAIRE will erect no improvements except either: 1) one (1) shade structure no greater than twenty (20) feet long by twenty (20) feet wide; 2) no more than two (2) shade structures each no greater than ten (10) feet long by ten (10) feet wide in size; or 3) any shade structure, in the opinion of the CITY, needed to adequately serve the public. CITY reserves the right to require the CONCESSIONAIRE to modify the dimensions of the structure. The Sites must show the approved Concession sign at all times during normal operating hours. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by CONCESSIONAIRE must be approved by CITY and will not remain on location after permitted hours of operation, unless prior written approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Agreement at any time falls short of or exceeds the number of Sites needed to adequately

serve the public, CONCESSIONAIRE will, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY. City will not be liable to CONCESSIONAIRE in any way for such adjustments. CONCESSIONAIRE will operate no more and no fewer than the Sites designated in this Agreement unless CITY decides to change the number of Sites.

- D. No Improvements. No improvements, trade fixtures, structures, and installations or additions to the Sites are allowed to be installed by CONCESSIONAIRE. All personal property remaining on the Sites after expiration or termination will become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said Sites to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up daily by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees will at all times conduct themselves and the operation of the Concessions in a respectable and courteous manner. CONCESSIONAIRE will thoroughly train its employees in their duties and will regularly monitor its employees to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all requirements of this Agreement.

10. Fees. CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee ("Percentage Fee") or the Minimum Fee ("Minimum Fee"), as described below. In the event that the combined total amount of fees paid by CONCESSIONAIRE during any Agreement Year equals or exceeds the annual Minimum Fee for that Agreement Year, then CONCESSIONAIRE will only pay the Percentage Fee each subsequent month until either a new Agreement Year begins or this Agreement ends.

- A. Percentage Fees. Percentage Fees will consist of sixteen percent (16.00%) of the gross income resulting from the Concession operations permitted under this Agreement during each month of an Agreement Year. The CITY, in its sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, as may be approved in writing by the CITY prior to the commencement of any additional service or operation. However, any activity conducted on the Sites without the prior written approval of the CITY will be subject to the requirements of Section 10.E.
- B. Minimum Fee. The annual Minimum Fee established for the first Agreement Year following the Effective Date is \$4,349.22, which is

\$362.44 on a monthly installment basis. The monthly Minimum Fee is to be paid in monthly installments on or before the day of the calendar month when the Percentage Fee is due pursuant to Section 10.J.

- C. Minimum Fee Adjustment. Effective at the beginning of the first day of the third and fifth Agreement Years of this Agreement ("Adjustment Date"), the annual Minimum Fee will be set at eighty percent (80.00%) of the annual average of the Total Fees Paid under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment date. The annual average of the Total Fees Paid will then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments will be calculated by the CITY upon completion of payments due for the preceding years in order to determine the amount of the Minimum Fee. Until such calculations are completed, CONCESSIONAIRE will continue paying the monthly Minimum Fee at the current rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate will be paid to the CITY within thirty (30) days following written notice provided pursuant to Section 47 of the Agreement. In no event will the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the Adjustment Date. In the event that the Total Fees Paid prior to the Adjustment Date do not exceed the current annual Minimum Fee, the annual Minimum Fee will be increased to one-hundred five percent (105.00%) of the annual Minimum Fee most recently in effect.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any fees when due, CONCESSIONAIRE will pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee will be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE will pay in addition to delinquent fee. The parties agree that such late fees are appropriate to compensate the CITY for loss resulting from delinquent fees, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE will pay to CITY, as an additional fee, an unauthorized use charge equal to hundred percent (100%) of the Gross Revenue (as defined in Section 10.F.) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in the Agreement for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, will constitute an authorization of an unauthorized use, and will not be waiver of any of the CITY's rights under the Agreement.

- F. Gross Revenue. ("Gross Revenue") as used in this Agreement, will include all income resulting from the Concession operations whether received or to become due; provided, however, that Gross Revenue will not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Gross Revenue includes all revenue received by CONCESSIONAIRE from internet sales (for example, if using a website such as Groupon, Gross Revenue would include all payment received by CONCESSIONAIRE from a Groupon sale). Possessory interest taxes or other property taxes will not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross Revenues will not include refund of deposits. The amount of taxes and refunds will be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee will be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees, permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site will be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.
- G. Payment Procedure. CONCESSIONAIRE will provide CITY with a correct income statement for the Sites operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Receipts in a form selected by CITY. This income statement will be due to CITY by the end of the calendar month immediately following the month for which the income statement was generated. The income statement will be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each statement will include:
- i. Total Gross Receipts for the subject month itemized as to business categories for which the separate Percentage Fee is established.
 - ii. The amount of the Percentage Fee due to CITY and the manner in which such Percentage Fee was computed and totaled.
 - iii. The accumulated total of all fees previously paid to CITY for the current Agreement Year.
 - iv. Payments in the greater of the two following amounts: The monthly Minimum Fee or the total Percentage Fee due CITY computed as

described in Sections 10.B and 10.A.

H. Inspection Of Records.

- i. Records. CONCESSIONAIRE will at all times during the Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records will be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine the Gross Revenue. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered will be read and recorded at the beginning and end of each business day. Regarding admission charges or concession fees, CONCESSIONAIRE will issue serially numbered tickets for such admission or Concession fees and will keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.
- ii. Financial Statements. *Within sixty (60) days after the end of the each Agreement Year, CONCESSIONAIRE will at its sole cost and expense, submit to CITY a statement in which the total Gross Receipts and the corresponding amounts of Percentage Fees paid to CITY for the previous Agreement Year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement will be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which will be legally binding upon CONCESSIONAIRE.*
- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.H.i, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, will have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the

requirements of this Agreement. At CITY's request, CONCESSIONAIRE will promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

iv. Audit Cost. The full cost of the CITY's audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):

- a) The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) on an annual basis for any Agreement Year or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
- b) CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

v. Any fee deficiency determined by the audit will be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under Section 10.D. CITY will credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY will refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

I. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a material breach of this Agreement and good cause for termination.

J. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks will be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First

Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments will be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment will be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

K. Security Deposit. The CONCESSIONAIRE will deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of five thousand dollars (\$5,000.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit will be available unconditionally to CITY for payment of delinquent fees, for correcting any default or breach of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the deposit or any remaining balance will be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee. ***CONCESSIONAIRE will maintain this security deposit throughout the Term of this Agreement. Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE will immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.***

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon ten (10) days prior written notice, CONCESSIONAIRE will reimburse the security deposit to the full required amount.
- ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE will deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Agreement.
- iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Agreement, CITY will return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Agreement.

11. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY's consent or approval will mean the written consent or approval of the CITY, unless

otherwise expressly provided. CITY's discretionary acts hereunder will be made in the CITY's sole and absolute discretion, unless otherwise expressly provided.

12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Sites and required by this Agreement, and that CONCESSIONAIRE will hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
13. Maintenance of the Sites. CONCESSIONAIRE will, at CONCESSIONAIRE's sole cost and expense and to CITY's satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Standard of Conduct. CONCESSIONAIRE and its employees will at all times conduct themselves and the operations on the Sites in a respectable and courteous manner.
15. Inspection. CITY may, at all times, enter and inspect the Sites.
16. Insurance. CONCESSIONAIRE will obtain and maintain throughout the Term of this Agreement, at its sole cost and expense, all insurance required by this Agreement. CONCESSIONAIRE's liabilities under this Agreement, including without limitation CONCESSIONAIRE's indemnity obligations, will not be deemed limited in any way to the insurance coverage required herein. CONCESSIONAIRE's maintenance of the required insurance coverage is a material consideration for this Agreement. Notwithstanding any provision of this Agreement to the contrary, if CONCESSIONAIRE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, CONCESSIONAIRE will be in default of this Agreement. CONCESSIONAIRE will not modify any policy or endorsement thereto which increases CITY's exposure to loss. CONCESSIONAIRE will obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which will be subject to CITY's written approval thereof:
 - A. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which will cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There will be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs.

insured claims or contractual liability. All defense costs will be outside the limits of the policy.

- B. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance will cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement.
- C. Workers' Compensation Insurance, as required by applicable laws, for all of CONCESSIONAIRE's employees who are subject to this Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- D. Liability Insurance for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). Such insurance will cover liability arising out of any vehicle (including owned, hired, and non-hired vehicles) operated in performing any and all Concessions or other services pursuant to this Agreement. Coverage will be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.
- E. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; (b) CONCESSIONAIRE's products; (c) CONCESSIONAIRE's work, including without limitation CONCESSIONAIRE's completed operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; or (d) the Site.
- F. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents will be in excess of CONCESSIONAIRE's insurance and will not contribute to it.

- G. Severability of Interest. Each policy must be endorsed to provide that CONCESSIONAIRE's insurance will apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and will provide cross-liability coverage.
- H. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Agreement will only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers will be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer will be subject to CITY's approval in each instance.
- I. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- J. Continuity of Coverage. All policies will be in effect on or before the first day of the Term, except "course of construction fire insurance" will be in force on commencement of all authorized construction, and full applicable fire insurance coverage will be effective upon completion of each insurable improvement. The policies will be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE will furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE will provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, CONCESSIONAIRE will immediately notify CITY and will immediately obtain replacement insurance as soon as possible.
- K. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE will also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- L. Accident Reports. CONCESSIONAIRE will immediately report to CITY any accident causing property damage or injury to persons on the Site or otherwise

related to the Allowed Uses. Such report will contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

M. Causes of Loss - Special Form Property Insurance. CONCESSIONAIRE will obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Allowed Uses of the Site under this Agreement or the Site in an amount to cover 100 percent (100%) of the replacement cost. CONCESSIONAIRE will deliver a certificate of such insurance to CITY's Real Estate Assets Department

17. Indemnification. CONCESSIONAIRE will defend, indemnify, and hold City and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, maintenance, restoration, or improvement of the Sites, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or willful misconduct of City and its elected officials, officers, employees, representatives, and agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE will pay the City for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.

18. Nondiscrimination. This Agreement is made and accepted upon and subject to the covenant and condition, which will run with the land, that CONCESSIONAIRE or any person claiming under or through CONCESSIONAIRE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Sites or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Sites.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for

subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.

20. Drug-free Workplace. CONCESSIONAIRE will be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
- B. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.

21. Accessibility Compliance. CONCESSIONAIRE will, as applicable to the Sites and CONCESSIONAIRE's possession, use, and occupancy of the Sites, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, CONCESSIONAIRE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). CONCESSIONAIRE's compliance will include without limitation the following:

- A. CONCESSIONAIRE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;

- B. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of CONCESSIONAIRE;
 - C. CONCESSIONAIRE will post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - D. Where required by law, all improvements, fixtures, structures, or installations on the Sites will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Sites which deny access to individuals with disabilities. All improvements and alterations will be at CONCESSIONAIRE's sole expense.
 - E. CONCESSIONAIRE's failure to comply with the accessibility requirements of this section. or submitting false information in response to these accessibility requirements, or both, will be a default of this Agreement.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE will bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE's occupancy, use, development and maintenance of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE will not use the Sites in any manner which, in CITY's opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE will not assign any rights granted by this Agreement or any interest herein without CITY's prior written consent. Approval of any such proposed assignment may be withheld in CITY's sole and absolute discretion. Any assignment by operation of law will automatically terminate this Agreement.
25. Signs. CONCESSIONAIRE will display the Concession sign displaying this is an CITY-approved Concession at all times while operating the Concessions. CITY will provide a sign during the first Agreement Year. If such sign is lost or stolen, CONCESSIONAIRE must obtain a duplicate sign and its sole expense. CONCESSIONAIRE will not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE will remove the item at its expense within 24 hours from receiving notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.
26. Charter Section 225. Pursuant to San Diego City Charter Section 225, CONCESSIONAIRE and assignees will make a full and complete disclosure of the

name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. CONCESSIONAIRE's failure to fully disclose all of the information required by Charter Section 225 or CONCESSIONAIRE's failure to require each of its assignees to fully disclose such information will be a default of this Agreement. Pursuant to City Charter Section 225, every person or entity that will have an interest in this Agreement as an assignee must be reviewed and approved by City.

27. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.

28. Encumbrances. CONCESSIONAIRE will keep the Site free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE will protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

29. Defaults and Remedies.

A. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under Subsection B below) which are grounds for immediate termination, in the event that:

- i. CONCESSIONAIRE will default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and will fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE will fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
- ii. CONCESSIONAIRE will voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or

law; or

- iii. CONCESSIONAIRE will make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY will not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Agreement without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- B. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection A above, in the event CONCESSIONAIRE will default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state or federal law, or any covenants or conditions in CONCESSIONAIRE's Operating Plan or Lifeguard Services Safety Requirements that, in CITY's sole discretion, relate to public safety ["Safety Violations"], CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, suspend or revoke this Agreement.

- C. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Site, this Agreement will continue in full force and effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the Concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.

- ii. The appointment of a receiver upon initiative of CITY to protect CITY's interest under this Agreement.

30. Damages. CITY, in the event of CONCESSIONAIRE's default under this Agreement, may recover the outstanding annual Minimum Fees due for the remaining term of the Agreement, less any mitigation measures taken by CITY. The remedies provided by this section are not exclusive and will be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein will be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein will be construed so as to defeat any other rights or remedies to which CITY may be entitled.
31. Compliance with Laws. CONCESSIONAIRE will, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE's occupancy, use, development, and maintenance of the Site.
32. Taxes. CONCESSIONAIRE will pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE will be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE's payment for taxes, fees, and assessments will not reduce any payment due CITY under this Agreement.
33. Equal Opportunity. CONCESSIONAIRE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. CONCESSIONAIRE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. CONCESSIONAIRE will cause the foregoing provisions to be inserted in all of CONCESSIONAIRE's contracts for work related to this Agreement so that such provisions will be binding upon each of CONCESSIONAIRE's contractors. CONCESSIONAIRE will fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request CONCESSIONAIRE will submit a current Workforce Report. CONCESSIONAIRE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

34. Equal Benefits. CONCESSIONAIRE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require concessionaires of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Agreement, CONCESSIONAIRE certifies that it will maintain such equal benefits throughout the term of this Agreement. CONCESSIONAIRE's failure to maintain equal benefits will be a default of this Agreement.
35. Equal Pay Ordinance. Unless an exception applies, CONCESSIONAIRE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, CONCESSIONAIRE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- A. Notice Requirement. CONCESSIONAIRE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
36. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of CONCESSIONAIRE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
37. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Sites in a manner which aids in the protection of the City of San Diego's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.
- Therefore, CONCESSIONAIRE will, at a minimum, implement and comply as applicable with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).
- It is ultimately CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CONCESSIONAIRE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
38. Hazardous Substances. CONCESSIONAIRE will not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors will not install, store, utilize, generate or sell any Hazardous Substance on the Sites without CITY's prior written

consent. CONCESSIONAIRE will, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- A. Release. A “release” will include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- B. Hazardous Substance. “Hazardous Substance” will mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- C. Remediation. If CONCESSIONAIRE’s occupancy, use, development, maintenance or restoration of the Sites results in a release of a Hazardous Substance, CONCESSIONAIRE will pay all costs of remediation and removal to the CITY’s satisfaction for unrestricted reuse of the Sites, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- D. Removal. If CONCESSIONAIRE or CONCESSIONAIRE’s contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Sites, CONCESSIONAIRE and/or CONCESSIONAIRE’s contractor or agent will remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Sites immediately upon or prior to the expiration or earlier termination of this Agreement. Upon CITY’s request, CONCESSIONAIRE will deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Sites. CONCESSIONAIRE will be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- E. Indemnity. CONCESSIONAIRE will protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from CONCESSIONAIRE’s occupancy, use, development, maintenance or restoration of the Sites, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any

necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, CONCESSIONAIRE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- F. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Sites, CONCESSIONAIRE will immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. CONCESSIONAIRE will deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, CONCESSIONAIRE will take all actions necessary to alleviate the danger. CONCESSIONAIRE will immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Sites.
- G. Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Sites ("CONCESSIONAIRE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Sites, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment will be obtained at CONCESSIONAIRE's sole cost and expense, and will establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's Operations on, in, from or under the Sites, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Sites, then the environmental assessment will include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE will cause, or if CONCESSIONAIRE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Sites and compliance with environmental law and regulations are achieved, and CONCESSIONAIRE will pay all costs and

expenses therefor.

39. Storm Water Pollution Prevention Program. CONCESSIONAIRE will comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

A. CONCESSIONAIRE will comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

B. CONCESSIONAIRE will comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

40. Waiver. The property constituting the Sites is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Permit, in one or more instance, will not be construed as a waiver of any such obligation, and the same will remain in full force and effect. CITY's waiver of a default will not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy will not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default will not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents will not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default will not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

41. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination will survive such expiration or termination.

42. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity will be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.

43. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement

is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

44. Number and Gender. Words of any gender used in this Agreement will include any other gender, and words in the singular number will include the plural, when the tense requires.
45. Captions. Section headings and captions will not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers will have no effect on the enforceability of this Agreement.
46. Entire Agreement. This Agreement, along with all exhibits and incorporated documents, constitutes the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties and Agreements between them and pertaining to this Agreement and CONCESSIONAIRE's occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Agreement will be in writing and signed by all the parties hereto.
47. Notices. Any notice required or permitted to be given under this Agreement will be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

The CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets
Department 1200 Third Avenue, Ste 1700 MS
51A
San Diego, CA 92101

CONCESSIONAIRE:

Endless Summer Surf Academy
Cecile Santini
4071 Boone St.
San Diego, CA 92117

48. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be

required for CONCESSIONAIRE's occupancy, use, development, or maintenance of the Sites.

49. San Diego's Strong Mayor Form of Governance. All references to "CITY" in this Agreement will be deemed to refer to "the Mayor or his/her designee." This section will remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.
50. City's Not-Liability. CITY will not be liable to CONCESSIONAIRE, its employees, agents, or representatives for any loss of revenue, business, or otherwise as a result of any weather conditions, beach closures, surf alerts, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, unusual governmental delays, epidemics, freight embargoes, causes beyond the reasonable control of CITY, or in the CITY's performance of any act related to protecting the public health and safety.
51. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity will provide CITY with evidence, satisfactory to CITY, that such authority is valid.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

CONCESSIONAIRE

By: [Signature]
Name: Cecile Santini
Title: owner

THE CITY OF SAN DIEGO, a California
municipal corporation

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity (i.e. Concession Agreement) is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15311 (Accessory Structures).

Date: 5/24/19
BY: [Signature]
Name: Alyssa Muto
Planning Department

Approved as to form this

14th ¹³ Day of May, 2019

MARA W. ELLIOTT, City Attorney

BY: [Signature]
Name: Noah J. Brzier
Title: Deputy City Attorney

EXHIBIT A: MAP OF SITES

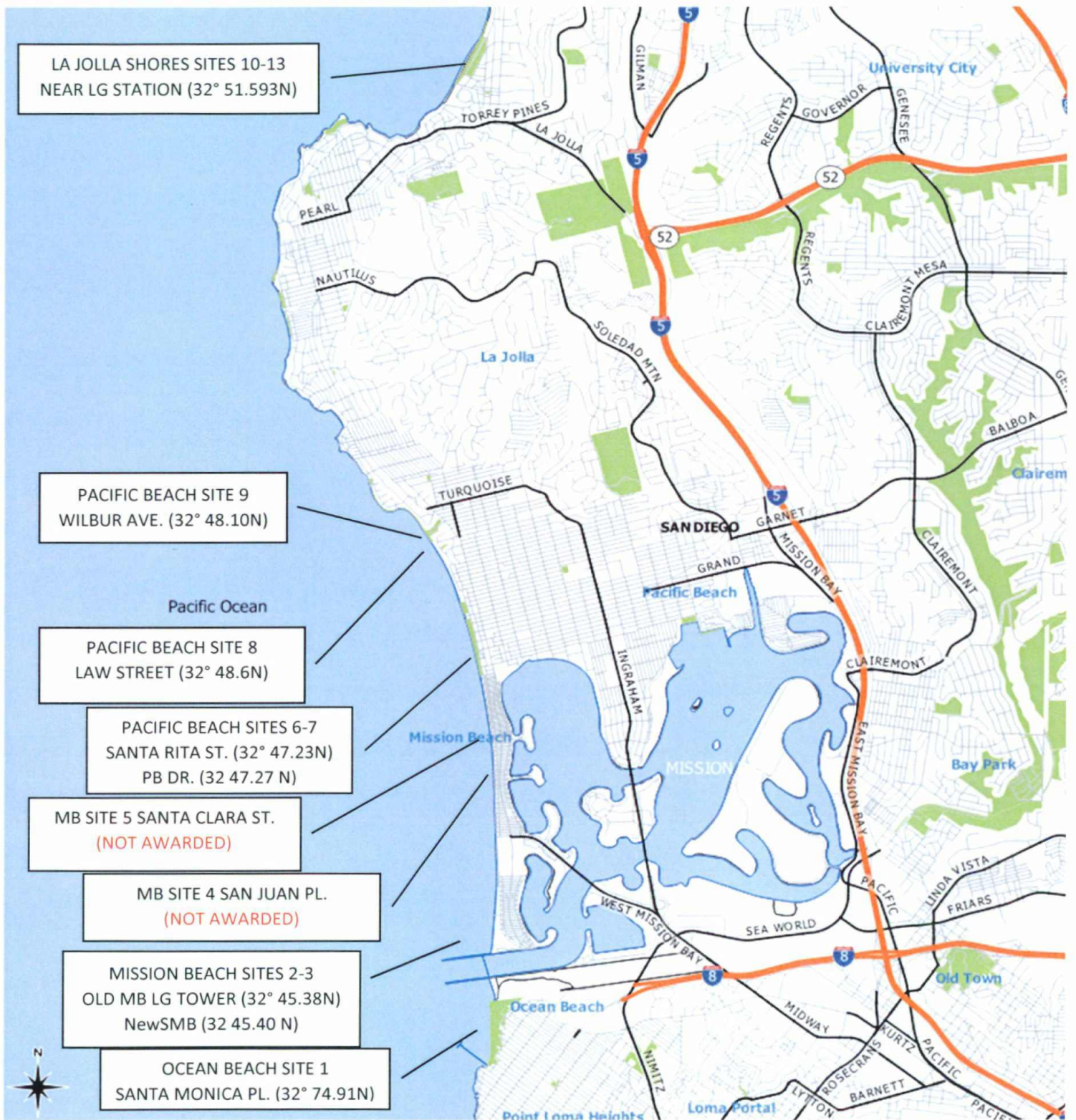


EXHIBIT B- OPERATING PLAN

CHAPTER 1: PROPOSED OPERATIONS

Endless Summer Surf Academy (ESSA), LLC respectfully submits the following proposal to operate a surf instruction concession on City beaches. Endless Summer Surf Academy will demonstrate the necessary organization and qualifications needed to operate a professional, credible, and successful surf instruction concession while also minimizing its impact on the local community and natural environment.

ESSA's surf lessons are geared towards safety, surf instruction, conservation, and fun. Its aim is to instill a love and respect of the ocean and to promote a sense of responsibility and conservation of our ocean and it's wildlife. All of our instructors are qualified and certified surfers and water men and women, who love and respect the ocean.

These proposed operations describe Endless Summer Surf Academy's Operating Plan, which fit within the criteria set forth in the Request For Proposal for Surf Instruction Concessions.

PROPOSED AGREEMENT TERM

Endless Summer Surf Academy proposes the maximum available term of sixty (60) months.

DESCRIPTION OF PROPOSED OPERATIONS

Endless Summer Surf Academy is a surf school that specializes in safe, quality, and a personalized approach to surf instruction by lowering the instructor to student ratio. ESSA strives to maintain a 1:4 instructor to student ratio at all times, in and out of the water. ESSA believes that smaller class sizes will increase the learning potential of each individual student, while creating a safer surf environment in which to learn. Safety and quality of instruction are of the utmost importance to ESSA.

ESSA will encourage and guide the development of each participant, while also instilling a love and respect for the ocean and its surrounding environment. Participants can expect to receive instruction on surfboard and wave knowledge, water safety, wave etiquette, and marine and coastal preservation.

ESSA recognizes the need and popularity of all girl surf instruction. Many programs will be designed to meet the specific needs of women and girls in this highly competitive and male dominated sport. ESSA has a female owner who understands the demand for a stronger female influence in the surf instruction industry. ESSA will always offer female participants the choice of a male or female instructor.

As surfers and water men and women, ESSA employees are adamant about the preservation of our beaches and ocean. Instructors will be persistent in cleaning up trash, debris, or recyclables on the beach or floating near the shore.

COMMUNITY NEEDS

ESSA serves the San Diego community in a variety of ways. ESSA focuses on the youth of San Diego County by providing high quality summer surf camps and lessons. Our programs provide local parents a safe, professional, and fun place for their children to spend the day. ESSA has many repeat customers throughout the year and from year to year. Commitment to safe, quality, and personalized surf instruction combined with a low student to instructor ratio is of utmost importance to our clients and keeps them coming back. ESSA anticipates continued growth in the years to come and plans to serve more of the San Diego community in the future.

ESSA also actively participates in community service to benefit the City and its residents with a variety of charitable programs and donations. ESSA donates complimentary surf instruction to private causes: San Diego City Schools, school fundraisers, local youth surf contests, and other charitable programs.

In 2015 and 2016, ESSA donated a day of surf lessons to the San Diego Burn Institute. Over 40 burn survivors participated and enjoyed a fun filled surf day. In 2017 and 2018, ESSA donated five days of surf lessons to underprivileged youth in San Diego through the RE/SURF project. ESSA plans to continue to donate surf lessons and camps to the San Diego community.

LIFEGUARD SERVICES SAFETY REQUIREMENTS

MAXIMUM NUMBER OF PARTICIPANTS

ESSA will limit the enrollment of surf camps and clinics to eight or less, with two instructors, maintaining a 1:4 ratio of instructors to students, never exceeding a 1:5

student to instructor ratio. No more than three camps or clinics will be in the water at one time. This creates a safe surf environment for learning and personalized attention for every student. Private and group lessons may be taught at the same time as camps or clinics. However, at no time will ESSA exceed the maximum number of students or boards allowed in the water (25) or on the beach (50) specified by the City.

IDENTIFYING MARKERS

All Endless Summer Surf Academy instructors and participants will be easily identified in and out of the water. Instructors will be wearing a red rash guard imprinted with the ESSA logo on front and INSTRUCTOR on back. All participants will be wearing yellow rash guards with the ESSA logo on the front. Rash guards will be worn at all times throughout the lesson.

The City issued signage will be clearly posted and placed in a location easily visible to Lifeguards and the local community. Signage will be posted prior to the start of the first lesson and remain displayed until the completion of the last lesson.

INSTRUCTOR TO STUDENT RATIO

ESSA will, at all times, maintain a maximum 1:5 student to instructor ratio while on the beach and in the water. ESSA prefers to maintain a 1:4 or 1:3 student to instructor ratio whenever it can, both on the beach and in the water. There will always be at least one American Red Cross certified instructor present and supervising all water lessons.

BEACH ACCESS

ESSA will not exclude the public from Site. Beach access will be kept clear at all times. ESSA 10x10 pop up tent and supplies will be organized and maintained to allow the public beach access at all times. Surfboards will be stacked, fins up and leashes wrapped, in an organized manner in front of the tent so that beach access is not obstructed.

CONCESSION SITE/LOCATION

ESSA will operate from assigned Site on the beach and in the water. All land operations will remain within assigned Site and water operations will remain within the immediate surfing area in front of Site. If necessary due to safety conditions, ESSA will

move to lifeguard approved alternate location. ESSA will not set up any operations in the park or parking lot areas.

EQUIPMENT

Soft foam boards with leashes and spring wetsuits will be provided to each participant and are included in the price of a lesson(s). If deemed necessary, during an advanced level surf lesson or camp, students will be allowed to bring their own hard surfboard, providing it has nose guard and tail guard protection for safety.

REQUIREMENTS FOR INSTRUCTORS

Endless Summer Surf Academy will seek out qualified instructors based on their experience in surfing and surf instruction or experienced surfers with a background in teaching that demonstrate trainability. ESSA instructors will be 18 years of age or older and be current in all required certifications.

Instructors will be hired based on related skills, character, personality, attitude, and leadership ability. All instructors will meet the certification criteria stated below and complete an extensive training program prior to any instruction.

All ESSA instructors will possess any one of the following certifications:

- American Red Cross "Lifeguarding"
- Miramar College "Introduction to Open Water Lifeguard"
- Water Safety Specialist "Surfing Instructor Safety Training"

All ESSA instructors will possess any one of the following CPR certifications:

- American Red Cross
- American Heart Association

All ESSA instructors will possess any one of the following certifications:

- Emergency Medical Technician (EMT)
- American Red Cross Emergency Response
- American Red Cross First Aid Basic

WAIVERS

Endless Summer Surf Academy will have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the City, its agents, officers, and employees harmless and indemnifies the same from any claims relating to the participants' activities on the City beach which arise from or are in any manner connected with the services provided to the participants by ESSA. Waivers will be completed and signed by all participants prior to any surf instruction.

FIRST AID KIT

An American Red Cross first aid kit, approved by a City of San Diego Lifeguard, will be onsite at all times. Prior to the initial class, Endless Summer Surf Academy will arrange with the lifeguard, an initial equipment and first aid safety inspection. The first aid kit will be kept in a watertight box along with other emergency supplies, including a fully charged and functioning cell phone with 911, main Lifeguard tower phone number, and owner's phone number programmed.

EMERGENCY RESPONSE PLAN

The following Emergency Response Plan will be covered fully during training with each and every instructor and/or employee of Endless Summer Surf Academy.

OCEAN CONDITIONS

Each day the ocean conditions will be assessed and determined if conditions are safe to conduct camps/clinics/lessons based on the skill level of the students and instructors.

GENERAL RESCUE PROCEDURES FOR WATER EMERGENCIES

1. QUICKLY SURVEY THE SCENE:

Quickly survey the scene. Instructors should take into account and assess the safety of the other students and themselves before beginning the rescue. Call the appropriate EMS (either 911 or the Lifeguard main tower; when dialing 911, instructors should request San Diego Lifeguard assistance). Provide EMS with detailed information on the emergency, location, victims, injuries, and status of the emergency. When possible, one instructor will be designated to assist the distressed or injured

victim, while the other instructor maintains the safety of the rest of the group. When necessary, instructors should get help from other nearby instructors. If responding to the emergency requires two instructors, one instructor will instruct and direct the rest of the group to the shore, where they are safe, so that both instructors may effectively respond to the emergency, while ensuring the safety of the rest of the group.

2. CONSIDER LEVEL OF TRAINING & RESCUE SKILLS:

The instructor should consider his/her level of rescue skill prior to responding to a water rescue and exercise good judgment. All Instructors will meet the City and Lifeguard Division certification requirements. Instructors should use the knowledge gained from these certifications to determine the best course of action to respond to the water emergency. Instructors are required to respond to any water emergency, but to never exceed their own capacities or levels of training. Instructors should never attempt to use skills out of their scope of training.

3. ENSURE PROPER USE OF RESCUE EQUIPMENT:

Instructors should take steps to ensure proper use of rescue equipment. Instructors should use any protective equipment in the first aid kit to ensure their personal safety and to reduce the risk of blood borne pathogens. Instructors should only use safety and rescue equipment for their intended purposes. Instructors should state their name and level of training, and obtain consent for help, if the victim is conscious.

4. SAFELY APPROACH THE VICTIM:

The instructor should safely approach the distressed victim and determine the extent of the emergency. If there is more than one victim, instructors should determine which victim is in the most immediate need of assistance and respond accordingly. Instructors should assess additional hazards and conditions that may cause further injury and determine the appropriate response accordingly.

5. PERFORM ANY NECESSARY RESCUE TO PROVIDE EMERGENCY CARE:

Perform and rescue based on American Red Cross or accepted certification training. Continue talking to the victim and provide reassurance; provide the victim with any necessary rescue instructions.

6. MOVE THE VICTIM TO SAFETY:

Move the victim to safety, to an area free and clear of potential hazards. Perform initial assessment and provide immediate necessary care to stabilize the victim so that he/she can be transported to the shore to receive any additional care or treatment that cannot be performed in the water.

7. REMOVE THE VICTIM FROM THE WATER:

Remove the victim from the water to provide further necessary care. Once on shore, one or more instructors should remain with the victim and continue treatment, while another available instructor activates 911, requesting Lifeguard assistance. If it is an extreme emergency with life-threatening conditions, all students should be brought to shore and situated in a safe place, clear of the emergency, while instructors continue to treat victim until EMS/Lifeguards arrive.

8. PERFORM PRIMARY SURVEY UPON RETURN TO SHORE:

Upon getting the victim to shore, perform a primary survey of the injuries or state of the victim and reassess the victim's condition. If EMS has not arrived yet, designate someone to call EMS again and update them on the victim's location and condition. Ensure that all other students and observers are clear of the emergency.

9. PERFORM EMERGENCY CARE:

Provide first aid, CPR, or other additional care until emergency medical services (EMS) arrive. Continue to monitor the victim's condition, providing appropriate care until more advanced medical personnel arrives (EMS).

10. CLEAR THE AREA:

If emergency exists, instructors will bring all remaining students to shore and situate them in a safe place, clear of the emergency. All additional instructors will assist as needed, help keep emergency clear, and if needed, direct EMS to the precise location of the victim.

GENERAL EMERGENCY RESPONSE PROCEDURES FOR LAND EMERGENCIES

1. SURVEY THE SCENE:

Survey the scene. Instructors should take into account and assess the safety of the other students and themselves. Consider if the scene is safe, the mechanism of injury or nature of the illness or emergency, how many victims are involved, and the necessary resources.

2. APPROACH VICTIM WHEN IT IS SAFE FOR THE RESCUER:

Approach the victim when it is safe for the rescuer and perform initial assessment. Check for conditions that are an immediate threat to the victim's life.

3. PERFORM A PRIMARY SURVEY:

Instructors should assess the victim's level of consciousness/mental status, the victim's airway, breathing, and circulation (ABC's). Also check for any severe bleeding. Determine what the victim's chief complaint or problem is, if they are injured or ill, and their age. Look for signs of an evidentiary injury or illness and symptoms mentioned by the victim. Gather information to determine a serious injury or illness that requires additional advanced care.

4. IF AN EMERGENCY EXISTS, ACTIVATE 911:

If emergency exists: a victim is unconscious, severely bleeding, suffering a breathing emergency, heart attack, or any other emergency condition, call EMS. Activate the 911 system and ensure paramedics and San Diego Lifeguards are responding.

5. PROVIDE CARE:

Determine and provide the necessary emergency care until EMS arrives. Don't move the victim unless it is absolutely necessary to provide care. Continue providing care until advanced emergency medical services arrive and continue performing an ongoing assessment of the condition of the victim. When emergency medical services arrive to take over, provide any information determined during the assessments and any other known information about the victim or the injury. All additional instructors will assist as needed, help keep emergency clear, and if needed, direct EMS to the precise location of the victim.

CELLULAR COMMUNICATIONS

All communication as outlined in the Emergency Response Plan will be conducted using cellular phones. A fully charged and functioning cell phone with 911, Lifeguard main tower, and owner's cell phone numbers programmed will be kept in the watertight box, also containing emergency supplies. This box will be kept under the 10 x 10 pop up tent at the Site at all times during surf instruction.

EMERGENCY SIGNALS

Whistles will be immediately available to all instructors and employees. One hand or any piece of equipment being waved overhead from side to side and/or three (3) short whistle blasts indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head indicates that everything is all clear. All employees will be diligent to look for any signs and signals of distress when they are in

the water and/or on the beach. Any emergency signal observed by personnel will cause the immediate activation of the Emergency Response Plan.

ACCIDENTS, INJURIES, AND INCIDENT SLIPS

All instructors and personnel are required to notify the owner of any incident, accident, or injury involving any and all customers and/or staff members and/or property. ESSA shall alert the Lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring during surf camp operations, regardless of severity. All rescues and medical aids involving surf camp students, instructors; or other personnel will be documented on company incident slips. Incident slips shall contain the names and addresses of involved parties, a statement of the circumstances, the date and hour of the accident or injury, names and addresses of any witnesses, and any other pertinent information.

RANKING OF SITES AND OPERATING PLAN

Proper operational logistics are necessary to create a professional operation that abides by City and Lifeguard rules, enforces the safety of the public and clients, and minimizes the impact on the community to ensure a pleasurable environment for residents and tourists.

As stated in the RFP, this Operating Plan will cover the period from May 1, 2019 to April 30, 2020. The following Operating Plan, including non-summer and summer months, is ESSA's bid on our number one (1) and number two (2) ranked Sites.

RANKING OF SITES

1st choice - Site 2: South of Old Mission Beach Lifeguard Tower

2nd choice - Site 3: North of Old South Mission Beach Lifeguard Tower

ESSA respectfully requests to be allowed to stay at their original site, Site 2: South of Old Mission Beach Lifeguard Tower. ESSA takes great pride in having earned the respect of the lifeguards and local surfers in the South Mission Beach area over the last five years. All ESSA instructors always show the utmost respect for the lifeguards, community, and local surfers.

For the past five years, ESSA has provided a high level of service to the community while operating, managing, and maintaining its Site in a fiscally prompt and responsible manner. ESSA's mission is to operate a professional, credible, and successful surf instruction concession while minimizing impact on the local community and natural environment.

ESSA's current Site location is on their website and marketing material throughout the City. It would be undesirable for ESSA to change their Site location.

OPERATING PLAN – MAY 1, 2019 to APRIL 30, 2020

The following Operating Plan, including non-summer and summer months, is for Endless Summer Surf Academy. (Number one or number two ranked Sites: Site 2, South of Old Mission Beach Lifeguard Tower or Site 3, North of Old Mission Beach Lifeguard Tower)

NON-SUMMER MONTHS

During non-summer months (September 1 through May 31), Endless Summer Surf Academy proposes to operate after school clinics, special event lessons (birthday parties, corporate team building, bachelorette parties), spring break surf camps, and

private and group surf lessons on City beaches. ESSA will not permit any solicitation, marketing, or renting or selling of beach equipment or other merchandise at any ESSA Site.

ESSA intends to maintain a 1:4 instructor to student ratio, never exceeding a 1:5 instructor ratio, both on the beach and in the water. This will ensure a safe and personal surf experience for all.

All registrations will be completed and paid in full online through our secure website found at endless Summersurfacademy.com. All participants will complete an online registration form, liability waiver, and make full payment online utilizing the online secure credit card link prior to their first lesson.

The website sends a paid and reserved customer an automatic confirmation email that includes: directions and parking information, cancellation policy, what to bring, and where to meet. Registration and payment must be completed online; transactions on the beach will not be permitted.

EQUIPMENT TRANSPORTATION

To ensure an organized teaching environment, special attention will be given to the quantity of items needed daily. This will diminish excessive equipment being brought to the Site. Information obtained from the online registration forms including age, weight, and height will be used to determine proper fitting of equipment for participants prior to arrival. Needed wetsuits and rashguards will be placed in bins and transported with boards, 10 x 10 pop up tent, City issued signage, and emergency supplies in a watertight box containing a cell phone.

ESSA's company vehicle will transport all necessary equipment and emergency supplies to the designated Site. The vehicle is registered, insured, regularly maintained, and kept clean and safe. Employee drivers are licensed and insured.

Drivers will adhere to the rules of the road and strictly follow the posted speed limit. The company vehicle will park in an available, legal parking space in the South Mission Beach parking lot and unload equipment. It is the policy of Endless Summer Surf Academy to politely reject any volunteered help from customers with regard to unloading or loading equipment. This will prevent customers from incurring any injuries.

Endless Summer Surf Academy employees will carry all equipment from the vehicle to designated Site on the beach. They will not leave equipment on the boardwalk, boardwalk wall, or in designated path for Lifeguard and City vehicles at any time. Surfboards will be neatly stacked in groups of 4 to 8, fins up and leashes wrapped, directly in front of the 10 x 10 pop up tent. Wetsuit bins and the watertight box containing emergency supplies and cell phone will be kept under the 10 x 10 pop up

tent at all times.

City issued signage will remain clearly posted at all times during surf instruction. If necessary, instructors will meet students at the designated drop off location and walk students to assigned Site.

ESSA's company vehicle will be parked in an available, legal parking space during the day. Upon the completion of lessons, ESSA's employees will carry all equipment from the Site to the vehicle. Instructors will help carry equipment to the vehicle ensuring that no equipment is left on the boardwalk, boardwalk wall, or in the designated path for Lifeguard and City vehicles at any time. The concession site will be vacated by 6:00 pm daily.

Endless Summer Surf Academy will maintain a clean, professional, and low profile Site. All employees will ensure that no trash or possessions are left at the conclusion of the day.

BEACH OPERATIONS

A daily schedule outlining the day's lessons, including names of participants, wetsuit sizes, ability levels, and any special needs or requests will be placed in the watertight box for ESSA instructors. Included on the daily schedule will be a comment section where instructors may give feedback about each lesson. This will ensure constant communication between instructors and management.

Instructors will be notified if a participant liability waiver has not been received. It will be the instructors' responsibility to be sure that the identified participant(s) completes the liability waiver and return it to the box prior to the start the first lesson. Extra liability waivers will be included with the daily schedule in the watertight box.

ESSA believes that safety is the most important component of any lesson. Therefore, before entering the water, instructor(s) will also explain the importance of staying in the designated surfing area. Participants will be informed as to the direction of the day's longshore currents and taught the necessary actions needed to remain close to instructor(s) at all times. This will help guarantee a more cohesive unit.

If dangerous or hazardous conditions are observed in the immediate surfing area in front of Site, instructors will ask Lifeguards to approve an alternate water operations site.

ESSA offers private and group lessons that can be customized to any ability level, from beginner to advanced. Being a strong swimmer and being comfortable in the ocean are prerequisites for any ESSA surf lesson. The three ability levels are:

Beginner: Student has never been on a surfboard. Student has tried surfing but has

difficulty standing up and catching his/her own waves consistently.

Intermediate: Student stands up consistently but needs help with bottom turns. Student is ready to paddle themselves into waves that have not broken yet. Student is ready to move to surfing outside the breaking waves.

Advanced: Student consistently paddles into own waves from the outside and can complete a bottom turn. Student can go both left and right, down the line. Students want to learn more advanced maneuvers such as cutbacks, roundhouses, and aerials.

PRIVATE AND GROUP LESSONS:

Ages: 5 and up

Maximum number of students per class:

Private lesson: 1

Group lesson: 25

Instructor to student ratio:

Private lesson: 1:1

Group lesson: 1:4, max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am - 5:00pm

Private Lesson: \$90 for 90 minute lesson

Group Lesson Price: \$65 each student for 90 minute lesson

Each 90 minute surf lesson will include 30 minutes of land instruction and 60 minutes of water instruction.

The 30 minute land instruction will cover:

- Paddling technique, pop-up, positioning on the surfboard
- Water safety and ocean awareness (including longshore currents and riptides)
- Surfing etiquette
- Basic wave riding knowledge
- Marine life & stingray shuffle
- Wave and tidal formation

During non-summer months, ESSA also offers after-school clinics. These clinics are beneficial follow-up surf instruction for students who attended a surf camp during the summer months and want to continue to develop their surfing abilities throughout the school year.

AFTER SCHOOL SURF CLINICS:

Age groups: 5 – 7, 8 – 12, 13 – 17

Maximum number of students per clinic: 12

Minimum number of students per clinic: 3

Instructor to student ratio: 1:4; max 1:5

Days of operation: Monday - Friday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: September through May

Hours: 2:00pm – 4:00pm

Price: \$140.00 each student for 3 hours instruction per week

Each clinic session lasts 60 minutes and meet three days per week, totaling three hours of instruction per week.

Each weekly clinic includes instructional sessions covering:

- Water safety (rip-tides, longshore currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Wave formation
- Marine life and stingray shuffle
- Conservation and coastal preservation

Also during non-summer months, ESSA offers special event lessons such as birthday parties, corporate team building, and bachelorette parties. These special event lessons follow the same format as a group lesson.

SPECIAL EVENT LESSONS

Age groups: 5 and up

Maximum number of students: 25

Minimum number of students: 4

Instructor to student ratio: 1: 4, max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am – 5:00pm

Price: \$65 each student (price increase per student for added amenities)

Each special event lesson includes instructional sessions covering:

- Water safety (rip-tides, longshore currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Wave formation
- Marine life and stingray shuffle
- Conservation and coastal preservation

SPRING BREAK SURF CAMPS:

Half Day Camps:

Ages: 5-17

Maximum number of students per camp: 8

Minimum number of students per camp: 4

Instructor to student ratio: 1:4, max 1:5

Maximum number of students in water at one time: 25

Schedule: weekly from March through April

Days of operation: Monday - Friday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Hours: 9:00am - 12:00pm

Price: \$290 per camper

Topics for daily instructional sessions are:

- Water safety (rip-tides, currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Surf history
- Wave formation
- Bottom contours (beach breaks, point breaks, reef breaks)
- Tidal information/moon phases

Half Day Camp Morning Schedule: 9am - 12:00pm

9:00am: Arrival, apply sunscreen, and suit up

9:10am - 9:30am: Instructional session & stretching

9:30am - 10:30am: Surf session #1

10:30am - 11:00am: Lunch/snack break

11:00am - 11:50pm: Surf session #2

12:00 pm: End of camp

SUMMER MONTHS

During summer months (June through August), Endless Summer Surf Academy proposes to operate surf camps, private and group surf lessons, and special event lessons (birthday parties, corporate team building, bachelorette parties) on City beaches. ESSA will not permit any solicitation, marketing, or renting or selling of beach equipment or other merchandise at any ESSA Site.

Endless Summer Surf Academy intends to maintain a 1:4 instructor to student ratio, never exceeding a 1:5 instructor to student ratio, both on the beach and in the water. This will ensure a safe and personal surf experience for all.

All registrations will be completed and paid in full online through our secure website found at endless Summersurfacademy.com. All participants will complete an online registration form, liability waiver, and make full payment online utilizing the secure online credit card link prior to their first lesson.

The website has a customized system that sends a paid and reserved customer an automatic confirmation email that includes: directions and parking information, cancellation policy, what to bring, and where to meet. Registration and payment must be completed online; transactions on the beach will not be permitted.

EQUIPMENT TRANSPORTATION

To ensure an organized teaching environment, special attention will be given to the quantity of items needed daily. This will diminish excessive equipment being brought to the Site. Information obtained from the online registration forms including age, weight, and height will be used to determine proper fitting of equipment for participants prior to arrival. Needed wetsuits and rashguards will be placed in bins and transported with boards, 10 x 10 pop up tent, City issued signage, and emergency supplies in a watertight box containing a cell phone.

ESSA's company vehicle will transport all necessary equipment and emergency supplies to the designated Site. The vehicle is registered, insured, regularly maintained, and kept clean and safe. Employee drivers are licensed and insured.

Drivers will adhere to the rules of the road and strictly follow the posted speed limit. The company vehicle will park in an available, legal parking space in the South Mission Beach parking lot and unload equipment. It is the policy of Endless Summer Surf Academy to politely reject any volunteered help from customers with regard to unloading or loading equipment. This will prevent customers from incurring any injuries.

Endless Summer Surf Academy employees will carry all equipment from the vehicle to designated Site on the beach. They will not leave equipment on the boardwalk, boardwalk wall, or in designated path for Lifeguard and City vehicles at any time. Surfboards will be neatly stacked in groups of 4 to 8, fins up and leashes wrapped, directly in front of the 10 x 10 pop up tent. Wetsuit bins and the watertight box containing emergency supplies and cell phone will be kept under the 10 x 10 pop up tent at all times.

City issued signage will remain clearly posted at all times during surf instruction. If necessary, instructors will meet students at the designated drop off location and walk students to assigned Site.

ESSA's company vehicle will be parked in an available, legal parking space during the day. Upon the completion of lessons, ESSA's employees will carry all equipment from

the Site to the vehicle. Instructors will help carry equipment to the vehicle ensuring that no equipment is left on the boardwalk, boardwalk wall, or in the designated path for Lifeguard and City vehicles at any time. The concession site will be vacated by 6:00 pm daily.

Endless Summer Surf Academy will maintain a clean, professional, and low profile Site. All employees will ensure that no trash or possessions are left at the conclusion of the day.

BEACH OPERATIONS

A daily schedule outlining the day's camps and/or lessons, including names of participants, wetsuit sizes, ability levels, and any special needs or requests will be placed in the watertight box for ESSA instructors. Included on the daily schedule will be a comment section where instructors may give feedback about each lesson. This will ensure constant communication between instructors and management.

Instructors will be notified if a participant liability waiver has not been received. It will be the instructors' responsibility to be sure that the identified participant(s) completes the liability waiver and return it to the box prior to the start the first lesson. Extra liability waivers will be included with the daily schedule in the watertight box.

ESSA believes that safety is the most important component of any lesson. Therefore, before entering the water, instructor(s) will also explain the importance of staying in our designated surfing area. Participants will be informed as to the direction of the day's longshore currents and taught the necessary actions needed to remain close to instructor(s) at all times. This will help guarantee a more cohesive unit.

If dangerous or hazardous conditions are observed in the immediate surfing area in front of Site, instructors will ask Lifeguards to approve an alternate water operations site.

ESSA surf lessons and camps are offered at three different ability levels. Being a strong swimmer and being comfortable in the ocean are prerequisites for any ESSA surf camp. The three ability levels are:

Beginner: Student has never been on a surfboard. Student has tried surfing but has difficulty standing up and catching his/her own waves consistently.

Intermediate: Student stands up consistently but needs help with bottom turns. Student is ready to paddle themselves into waves that have not broken yet. Student is ready to move to surfing outside the breaking waves.

Advanced: Student consistently paddles into own waves from the outside and can complete a bottom turn. Student can go both left and right, down the line. Students

want to learn more advanced maneuvers such as cutbacks, roundhouses, and aerials.

SURF CAMPS:

Half-Day Camps:

Ages: 5-17

Maximum number of students per camp: 8

Minimum number of students per camp: 4

Instructor to student ratio: 1:4, max 1:5

Maximum number of camps in water at one time: 3

Schedule: weekly from June through August (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Days of operation: Monday - Friday

Hours: 9:00am - 12:00pm

Price: \$290 per camper

Topics for daily instructional sessions are:

- Water safety (rip-tides, currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Surf history
- Wave formation
- Bottom contours (beach breaks, point breaks, reef breaks)
- Tidal information/moon phases
- Surfboard types, construction & repair
- Marine life and stingray shuffle
- Conservation and preservation
- Balance exercises (indo-boarding)

Half-day Camp Morning Schedule: 9am - 12:00pm

9:00am: Arrival, apply sunscreen, and suit up

9:10am - 9:30am: Instructional session & stretching

9:30am - 10:30am: Surf session #1

10:30am - 11:00am: Lunch/snack break

11:00am - 11:50pm: Surf session #2

12:00 pm: End of camp

Full Day Camps:

Ages: 5-17

Maximum number of students per camp: 8

Minimum number of students per camp: 4

Instructor to student ratio: 1: 4, max 1:5

Maximum number of camps in water at one time: 3

Schedule: weekly from June through August (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day,

Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)
Days of operation: Monday - Friday
Hours: 9:00am - 2:00pm
Price: \$450 per camper

Full Day Camp Schedule: 9am - 2pm

9:00am: Arrival, apply sunscreen, and suit up
9:10am - 9:30am: Instructional session & stretching
9:30am - 10:30am Surf session #1
10:30am - 11:00am Lunch/snack break
11:00am - 12:30pm Surf session #2
12:30pm - 1:00pm Lunch/snack break
1:00pm - 1:50pm Surf session #3
2:00pm: End of camp

PRIVATE AND GROUP LESSONS:

Ages: 5 and up
Maximum number of students per class:
Private lesson: 1
Group lesson: 4
Instructor to student ratio:
Private lesson: 1:1
Group lesson: 1:4; max 1:5
Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)
Schedule: Year round
Hours: 9:00am - 5:00pm
Private Lesson: \$90 for 90 minute lesson
Group Lesson Price: \$65 each student for 90 minute lesson

Each 90 minute surf lesson will include 30 minutes of land instruction and 60 minutes of water instruction.

The 30 minute land instruction will cover:

- Paddling technique, pop-up, positioning on the surfboard
- Water safety and ocean awareness (including longshore currents and riptides)
- Surfing etiquette
- Basic wave riding knowledge
- Marine life & stingray shuffle
- Wave and tidal formation

Also during summer months, ESSA offers special event lessons such as birthday parties, corporate team building, and bachelorette parties. These special event lessons will follow the same format as a group lesson.

SPECIAL EVENT LESSON

Age groups: 5 and up

Maximum number of students: 25

Minimum number of students: 3

Instructor to student ratio: 1:4, max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am – 4:00pm

Price: \$65 each student (price increase per student for added amenities)

Each special event lesson includes instructional sessions covering:

- Water safety (riptides, longshore currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Wave formation
- Marine life and stingray shuffle
- Conservation and coastal preservation

SAMPLE INTERPRETIVE PROGRAMS

CURRENTS: What kinds of currents are there?

The bigger the surf, the stronger the currents will be. The two most common types of currents are rip currents and longshore currents.

Longshore currents move parallel to the shore or up and down the beach. Longshore currents are usually more of a nuisance than a danger, unless you are near a jetty or pier. However, it is always good to be aware of which direction the longshore current is moving so that you don't get swept too far up or down the beach.

Rip currents are the most dangerous. As waves wash toward the shore, they carry a lot of water with them. Water pools up next to the beach and forms a longshore current on the inside. As the water moves down the beach, it will sometimes funnel back out to sea in a deeper spot, a spot of least resistance. This creates a rip current. This current is usually very swift and goes straight out past the surf zone and then dissipates. Strong rip currents look like rivers and are often visible, if you look closely.

What do you do if you get caught in a rip current? **Do not try to swim against it!** It is almost impossible to swim against a strong rip current and the effort will tire you out. The best way to get free of a rip current is to swim parallel to shore, or up or down the beach, until you are out of the current (they are usually not very wide) and then swim in to shore. Always remember that the universal distress signal is to wave one arm above your head.

WAVES: How are waves created?

Waves and swell are created by wind. Around the earth there are areas of high pressure and low pressure. The areas of high pressure are always trying to fill the areas of low pressure. The transition of air from high pressure areas to low pressure areas is wind.

When the wind blows over the ocean, it creates small ripples on the surface of the water. As the ripples grow, the wind gets better friction on the ocean surface. The ripples then grow into small waves. As the wind continues to blow, the small waves turn into larger and larger waves.

Waves are created when wind transfers its energy from the air to the water. The harder the wind blows, the longer the wind blows, and the greater the distance it blows, the bigger the waves. As the waves grow larger, the energy transfers deep below the ocean surface. The stronger waves with more energy below the surface will maintain their strength over the distance and will become deep-water waves or swell.

When waves approach the shore, the energy of the wave below the surface drags across the shallower ocean floor and the friction will slow the wave down. The wave energy below the surface of the ocean is pushed upward, causing the height of the wave to increase. As the wave gets closer to shore, more and more energy is pushed upward making the wave steeper and more unstable, until it finally breaks.

A wave traveling over a gradual sloping ocean floor, such as a beach, will become a crumbly, slow breaking wave. While a wave travelling over a steep ocean floor, such as a reef, will result in a faster, more hollow breaking wave.

BOTTOM CONTOURS: What are the different bottom contours?

Different bottom contours create different types of waves. Beach-breaks: beach-break waves break over a sand bottom and are usually more erratic and shifty than other breaks. Beach-breaks have fewer hazards and are usually good for beginners. Point-breaks: point-breaks occur when there is a dip in the headland, creating a bend in the coast. Point-breaks have the potential to create perfect long, tapering waves. Reef-breaks: a reef-break is a wave that breaks over a rock or coral shelf. Due to the consistent bottom, reef-breaks are consistent in their shape and location. Some of the world's best waves are reef-breaks (Pipeline and Teahupoo) and are not recommended for beginners.

The incline or slope of the bottom contour also plays a major role in the way the wave breaks. Mushy or slow rolling waves occur when a swell approaches a more gradual sloping bottom contour. These waves are great for beginner since they are softer and more forgiving. Plunging or hollow waves occur when the swell comes out of deep water and hits a shallow sand bar or reef. These waves tend to break fast and from top to bottom making them more challenging and not very good for beginners.

EQUIPMENT LIST

The following is a list of all necessary equipment used and owned by ESSA to provide the level of service required by the surf instruction concession agreement.

- 2006 GMC 10 ft. Box Truck - used to transport all equipment
- Twenty-five (25) 8 ft. Foam Surfboards with leash
- Two 9 ft. Foam Surfboards with leash
- Sixty-five (65) Spring Wetsuits in various sizes
- Forty (40) Rash Guards in red for instructors and yellow for students
- 10 x 10 Pop Up Tent
- Underwater Camera
- Indo Board for balance practice
- First Aid Kit with Lifeguard required supplies including a cell phone
- Box for waivers, incident reports, sunscreen
- Tubs to transport wetsuits and rash guards
- City approved concession sign

EXHIBIT C: LIFEGUARD SERVICES SAFETY REQUIREMENTS

The following requirements are subject to revision at any time by the CITY:

1. **Maximum number of participants/boards on the beach and in the water**
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**
Surf CONCESSIONAIRE'S must operate from their assigned Site on the beach sand only. In-water operations should be conducted in the immediate surfing area in front of CONCESSIONAIRE'S beach site. Based on safety considerations, Lifeguards may approve an alternate water operations site. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.

When standup paddleboards (SUP) are not able to be launched in front of the CONCESSIONAIRE'S beach site at La Jolla Shores because of large surf, approval may be granted by the lifeguards to enter and exit from the Boat Launch. In these situations, the SUP will be considered a vessel and must have proper carriage requirements, including personal floatation device (PFD). Furthermore, the SUP's must remain outside the surf at all times.
6. **Equipment**
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.

SUP's are required to have a leash.

7. Minimum Requirements for Instructors

The minimum age for an instructor is eighteen (18) years of age.

Surf camp instructors must possess any one (1) of the following certifications:

- a. American Red Cross, "Lifeguarding"
- b. Miramar College, "Introduction to Open Water Lifeguard"
- c. Water Safety Specialist, "Surfing Instructor Safety Training"
- d. Other certification whose curriculum is approved by the Lifeguard Division.

Additionally, surf camp instructors must possess any one (1) of the following CPR certifications:

- a. American Red Cross
- b. American Heart Association
- c. Any other nationally recognized basic CPR training with certification

Finally, surf camp instructors must possess any one (1) of the following certifications:

- a. Emergency Medical Technician (EMT)
- b. American Red Cross Emergency Response
- c. American Red Cross First Aid Basic
- d. Any other nationally recognized first aid course with certification.

8. Waivers

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. First Aid Kit

An American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection.

10. EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIRES are required to

read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

Ocean Conditions

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

General Rescue Procedures for Land Emergencies

1. Survey the scene.
2. Approach the victim when it is safe for the rescuer.
3. Perform a primary survey.
4. If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguards are responding.
5. Provide appropriate care until EMS arrives.

Cellular Communications

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

Emergency Signals

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

Accidents, Injuries and Incident Slips

CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

11. Termination of Surf Camp Operations

Lifeguards reserve the right to suspend or terminate surf camp operations based on safety considerations

12. Notice of Violation

Concessionaire understands and fully agrees that keeping patrons safe while engaged in surf camps shall be its highest priority. Should San Diego Fire-Rescue Lifeguards or other official City personnel find violations or a pattern of violations of any requirement of the Concession Agreement, then a "Violation of Concession Agreement/Safety Notice" will be issued by the Fire-Rescue Department Lifeguards Division.

The CITY reserves the right to perform inspections and/or reviews with or without advance notice. These inspections and/or reviews may be for any or all aspects related to the Concession Agreement and its attachments, including, but not limited to, ensuring that Concessionaire: (a) possesses all of the requisite certificates and qualifications of its instructors; (b) properly addresses all safety issues; (c) adheres to all aspects of the concession agreement. Violation of any aspect of the Concession Agreement may result in suspension or revocation of the Agreement.

When a Concessionaire, its employee, agent, or representative is issued a "Violation of Concession Agreement/Safety Notice," the CITY shall evaluate the notice of violation for an appropriate and reasonable sanction, up to and including a suspension or revocation of the Concession Agreement.